

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Deegan	Team: Bias Squad #02	CCRB Case #: 202303981	<input type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/07/2023 9:00 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 11/7/2024	Precinct: 112
Date/Time CV Reported Mon, 05/08/2023 9:22 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/08/2023 9:22 AM

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Dennis Cobic	01132	970458	112 PCT
2. PO Annie Cosgrave	06700	971384	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Dennis Cobic	Abuse: Police Officer Dennis Cobic stopped § 87(2)(b)	§ 87(2)(b)
B . PO Annie Cosgrave	Abuse: Police Officer Annie Cosgrave stopped § 87(2)(b)	§ 87(2)(b)
C . PO Dennis Cobic	Abuse: Police Officer Dennis Cobic questioned § 87(2)(b)	§ 87(2)(b)
D . PO Annie Cosgrave	Abuse: Police Officer Annie Cosgrave questioned § 87(2)(b)	§ 87(2)(b)
E . PO Dennis Cobic	Abuse: Police Officer Dennis Cobic failed to obtain language interpretation services for § 87(2)(b)	§ 87(2)(b)
F . PO Annie Cosgrave	Abuse: Police Officer Annie Cosgrave failed to obtain language interpretation services for § 87(2)(b)	§ 87(2)(b)
G . PO Dennis Cobic	Abuse: Police Officer Dennis Cobic took law enforcement action based upon actual or perceived national origin	§ 87(2)(b)
H . PO Annie Cosgrave	Abuse: Police Officer Annie Cosgrave took law enforcement action based upon actual or perceived national origin.	§ 87(2)(b)
I . PO Annie Cosgrave	Abuse: Police Officer Annie Cosgrave threatened to remove § 87(2)(b) to the hospital.	§ 87(2)(b)
J . PO Annie Cosgrave	Abuse: Police Officer Annie Cosgrave took law enforcement action based upon actual or perceived age.	§ 87(2)(b)
K . PO Dennis Cobic	Abuse: Police Officer Dennis Cobic took law enforcement action based upon actual or perceived age.	§ 87(2)(b)
L . PO Dennis Cobic	Abuse: Police Officer Dennis Cobic improperly used his body-worn camera.	§ 87(2)(b)
M . PO Annie Cosgrave	Abuse: Police Officer Annie Cosgrave failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
N . PO Dennis Cobic	Abuse: Police Officer Dennis Cobic failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
O . PO Annie Cosgrave	Abuse: Police Officer Annie Cosgrave failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
P . PO Dennis Cobic	Abuse: Police Officer Dennis Cobic failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 8, 2023, at 9:20am, § 87(2)(b) filed a CCRB complaint via phone on behalf of her mother, § 87(2)(b) (**Board Review 01**). This case was initially assigned to Investigator Lauren Haydin in the General Investigations Division. On June 23, 2023, the case was accepted by the Racial Profiling and Biased Policing Investigations Unit and assigned to Investigating Attorney Hannah Deegan.

At 9am on May 7, 2023 at § 87(2)(b) in Queens, § 87(2)(b) was walking her dog in front of her apartment building when she was approached by Police Officer Dennis Cobic and Police Officer Annie Cosgrave, both of the 112th Precinct. PO Cobic and PO Cosgrave stopped § 87(2)(b) (**Allegations A-B: Abuse of Authority, § 87(2)(g)**) and questioned her about a neighbor's allegation that her dog had bitten the neighbor (**Allegations C-D: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) tried to answer the officers' questions, expressing to them that her English was limited and requesting the assistance of her daughter. PO Cobic and PO Cosgrave initially denied this request, and did not obtain any other interpretation services, a failure which constituted biased policing on the basis of national origin (**Allegations E-H: Abuse of Authority, § 87(2)(g)**). PO Cosgrave asked § 87(2)(b) if she needed to go to the hospital (**Allegation I: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) is a senior, and felt PO Cobic and PO Cosgrave's treatment of her was effected by her age (**Allegations J-K: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) alleged that PO Cobic did not have his body-worn cameras activated during the interaction (**Allegations L: Abuse of Authority, § 87(2)(g)**). Neither PO Cobic nor PO Cosgrave provided § 87(2)(b) or § 87(2)(b) with business cards (**Allegations M-N: Abuse of Authority, § 87(2)(g)**). **Allegations O-P: Abuse of Authority, § 87(2)(g)**
§ 87(2)(g), § 87(4-b)

No arrests were made or summons issued as a result of this incident.

This investigation obtained a cell phone video recording from § 87(2)(b) (**Board Review 02**), and body-worn camera recordings from both PO Cobic and PO Cosgrave (**Board Review 03**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Dennis Cobic stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Annie Cosgrave stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Dennis Cobic questioned § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Annie Cosgrave questioned § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Dennis Cobic failed to obtain language interpretation services for § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Annie Cosgrave failed to obtain language interpretation services for § 87(2)(b)

In her statement to the CCRB, § 87(2)(b) testified that on the morning of May 7, 2023, she was walking her dog around her neighborhood in Rego Park, Queens (**Board Review 04**). On her walk, she saw two police officers speaking to her male neighbor on § 87(2)(b) § 87(2)(b). § 87(2)(b) knew the neighbor from a prior interaction in which the neighbor had falsely accused § 87(2)(b) dog of biting him. Seeing the neighbor conversing with the officers, § 87(2)(b) became

concerned the neighbor was again making false allegations about the dog bite and headed toward her home.

At approximately 9am, § 87(2)(b) was standing on the sidewalk by the entrance to her building at § 87(2)(b) when PO Cobic and PO Cosgrave approached her. PO Cobic verbally told her to stop, and both officers stood between her and the building entrance, blocking her way home. § 87(2)(b) further testified that her primary language is Korean, with only basic English proficiency insufficient for complicated conversations. In her limited English, § 87(2)(b) tried to ask why she was being stopped, and neither officer answered. PO Cobic asked for § 87(2)(b) name and date of birth, which she provided. PO Cobic then asked for her address and how long she had been living there. § 87(2)(b) testified that she could not remember her address, explaining she was nervous and confused so she could not think straight. § 87(2)(b) further testified that she was having difficulty understanding everything PO Cobic said due to the language barrier. § 87(2)(b) wanted to ask why she was being treated like a criminal when she had done nothing wrong, and why the officers denied her daughter as an interpreter, but she could not fully express herself given her limited English proficiency.

Neither PO Cobic nor PO Cosgrave asked § 87(2)(b) if she needed an interpreter. § 87(2)(b) asked the officers multiple times if she could call her daughter, who was inside their apartment at § 87(2)(b). PO Cobic continued to ask questions without permitting § 87(2)(b) to call her daughter. § 87(2)(b) told the officers she had other plans and needed to leave, but PO Cobic said she could not go. § 87(2)(b) testified that she asked multiple times if she could go home. In response, the officers physically blocked her path, raising their arms to indicate she could not pass. § 87(2)(b) was scared, nervous, and confused because she thought she was not free to leave.

In his statement to the CCRB, PO Cobic testified that he and PO Cosgrave arrived at the vicinity of § 87(2)(b) in Queens at approximately 9am on May 7, 2023 in response to a 911 call (Board Review 05). The caller informed PO Cobic and PO Cosgrave that he'd been bitten by a dog a few weeks prior, but was unable to get information for the dog and owner to complete an Animal Bite Report. The caller called 911 because he had seen the owner and dog again and wanted the officers to get information from the owner. PO Cobic told the 911 caller they could not force the owner to give her information, saying they could ask but if she was not willing that they could not "harp on it" because no crime had taken place.

PO Cobic testified that NYPD protocol requires completion of an Animal Bite Report when a civilian alleges being bitten by a dog. The Animal Bite Report requires information for the person bitten, the dog's owner, and the dog, such as its vaccination history. Protocol also requires that Animal Control be notified, and Animal Control will follow their own procedure, including any investigation of the legitimacy of the accusation via photos of injuries and medical records. If a dog gets three bite reports, the dog will be put down. PO Cobic stated that the 911 caller's request for the officers to get the dog owner's information was consistent with NYPD protocol for a dog bite.

The caller pointed out the owner – § 87(2)(b) – and her dog. PO Cosgrave drove with PO Cobic about a block, where they exited their vehicle and approached § 87(2)(b) on foot. PO Cobic asked § 87(2)(b) if it was okay if they spoke to her, before proceeding to ask for her name, address, and ID.

PO Cobic believed § 87(2)(b) English proficiency was good because § 87(2)(b) understood what PO Cobic was saying and answered all the questions "she wanted to answer." PO Cobic did not recall if § 87(2)(b) said she did not speak English, if she ever asked for an

interpreter, or if she said anything else indicating a need for an interpreter. PO Cobic recalled § 87(2)(b) requesting to call her daughter for assistance but did not recall why. PO Cobic did not ask what languages § 87(2)(b) spoke and did not offer any interpretation services. PO Cobic testified that it is protocol to seek language line assistance when a civilian answers questions in a way that suggests they do not understand, if they explicitly say they don't understand, if they say they don't have good English, or if they explicitly ask for interpreter. In response to PO Cobic's own body-worn camera footage in which § 87(2)(b) asks for her daughter who "speaks English well" at 9:02 (**Board Review 03**), PO Cobic stated he did not get language line services because § 87(2)(b) was "uncooperative" and never asked for the language line.

PO Cobic testified that § 87(2)(b) was free to leave during the entire encounter. § 87(2)(b) did try to leave, and PO Cobic said, "hold on," at which point § 87(2)(b) stopped – however, PO Cobic testified that if § 87(2)(b) had continued walking in defiance of his instruction, PO Cobic would not have prevented § 87(2)(b) from leaving. PO Cobic asked her to stay, and then § 87(2)(b) "chose" to comply. PO Cobic did not recall telling § 87(2)(b) that she could not get her daughter.

In her statement to the CCRB, PO Cosgrave testified that she and her partner PO Cobic received a 911 call in their sector (**Board Review 06 & 07**). The call was a 68 "perp past crime" – PO Cosgrave clarified that though the call characterized the incident as a crime, she did not characterize the incident that way. PO Cosgrave and PO Cobic responded to the call and spoke to the 911 caller.

The caller told PO Cobic that he had been bitten by a dog a couple of weeks prior, and the caller had just seen the dog's owner – a 60-year-old Asian woman wearing a black coat, short with a slim build. The caller wanted to get the owner's information, and for the dog to get training. The caller told PO Cosgrave he had received medical attention for the dog bite. The caller pointed the officers in the direction he saw the owner walking.

Protocol for handling a dog bite includes completing a Dangerous Animal Report. PO Cosgrave did not recall if she explained the report process to the caller, but the caller's request that the officers collect the owner's pedigree information was consistent with PO Cosgrave's training for what to do in such a situation, since the form asks for information about the dog and the dog's owner. PO Cosgrave drove a block or two away and spotted the owner, § 87(2)(b). PO Cosgrave asked § 87(2)(b) if they could speak with her. PO Cosgrave then asked for § 87(2)(b) name, address, and date of birth – information necessary to complete the Dangerous Animal Report.

PO Cosgrave characterized § 87(2)(b) English proficiency as conversational. § 87(2)(b) was responding to PO Cosgrave's questions and was able to give her name. § 87(2)(b) did not say she could not speak English nor did she request an interpreter. PO Cosgrave did not ask § 87(2)(b) what languages she spoke. PO Cosgrave testified that § 87(2)(b) asked for her daughter's assistance, but not for language purposes. When shown contradictory body-worn camera footage from PO Cobic at 9:02 (**Board Review 03**), PO Cosgrave testified that she did not hear § 87(2)(b) request her daughter's assistance for language purposes. As per protocol, PO Cosgrave will provide a translator if one is explicitly requested, or if someone does not speak enough English to request than the officer would call an interpreter without a request.

PO Cosgrave testified that § 87(2)(b) was free to leave for the entire interaction, but that § 87(2)(b) never attempted to walk away. PO Cosgrave further testified that if § 87(2)(b) had tried to leave, PO Cosgrave would not have stopped her, and that PO Cosgrave never verbally told § 87(2)(b) she could not leave. When shown contradictory body-worn camera footage from PO Cobic at 7:41

showing PO Cosgrave saying “No” when § 87(2)(b) began to walk away from the officers, PO Cosgrave reiterated that § 87(2)(b) was free to leave and that PO Cosgrave did not and would not physically stop her.

In PO Cobic’s body-worn camera footage (**Board Review 03**) at 01:55, PO Cosgrave tells the 911 caller that if the owner doesn’t want to give her information, the officers cannot force her to do so, reiterating the same message at 02:56 and again at 03:25.

At 05:11, PO Cosgrave and PO Cobic approach § 87(2)(b) and ask her to speak privately. PO Cobic raises the dog bite allegation. § 87(2)(b) attempts to explain the situation in broken English, communicating that the dog jumped on the man but did not bite him. At 06:01, PO Cosgrave says the other civilian has injuries from the dog bite incident and the civilian wants her information to “further along the process.” PO Cobic reiterates that the civilian wants her information. § 87(2)(b) attempts to tell the story of what happened and says the dog did not bite the man. At 06:38, PO Cobic asks for § 87(2)(b) ID. § 87(2)(b) says she doesn’t have one. PO Cobic says, “Do you have a passport? Identification for you.” PO Cobic then asks for § 87(2)(b) name. § 87(2)(b) says, “My name is § 87(2)(b)” She asks why the officers are speaking with her.

At 07:36, PO Cobic asks § 87(2)(b) to spell her first name. § 87(2)(b) tells the officers to wait, saying she will come back as she starts to walk away. PO Cobic and PO Cosgrave stop her from walking away by saying, “No.” PO Cobic asks for § 87(2)(b) first and last name. She says, § 87(2)(b) PO Cobic asks her to spell it for him, and § 87(2)(b) complies. At 07:58, PO Cobic asks for § 87(2)(b) date of birth. § 87(2)(b) states, § 87(2)(b) PO Cobic asks where § 87(2)(b) lives. § 87(2)(b) says she lives in the building they are standing in front of, pointing to it. PO Cosgrave asks for § 87(2)(b) address. § 87(2)(b) says, “One second, I’m going to tell – she’s gonna come, okay?” PO Cosgrave says no. PO Cosgrave asks for § 87(2)(b) address, and § 87(2)(b) says she does not know. § 87(2)(b) says she is going to ask her daughter. At 08:40, PO Cobic and PO Cosgrave ask § 87(2)(b) for the address of her apartment again. § 87(2)(b) says she doesn’t know. PO Cosgrave says, “She’s playing games.” § 87(2)(b) says she is going to get her daughter to speak with them. At 08:51, PO Cobic says, “Answer my questions. Answer my questions.”

At 09:02, § 87(2)(b) says, “Okay, because my daughter English well. My daughter come in here.” PO Cosgrave says, “No, that’s okay. We just want your information so we can leave.” § 87(2)(b) says she will get her daughter to write it down. At 9:23, § 87(2)(b) begins to walk away. PO Cosgrave says, “Ma’am,” prompting § 87(2)(b) to stay. § 87(2)(b) reiterates that she needs her daughter’s assistance. At 09:37, PO Cobic and PO Cosgrave ask § 87(2)(b) what apartment she lives in. She says she forgot and she will have her daughter tell them. Eventually, PO Cobic relents to § 87(2)(b) request to get her daughter. At 10:07, § 87(2)(b) responds, “Building there,” pointing to the building without moving as if waiting for PO Cobic’s permission. § 87(2)(b) only begins moving toward the building once PO Cobic says, “Let’s go” and begins walking toward the building entrance himself.

NYPD Patrol Guide Procedure 212-11 governs investigative encounters that rise up to a Level 3 in *De Bour*, providing that the Level 2 common law right of inquiry permits an officer to ask “pointed or accusatory questions” based on “founded suspicion” that “criminal activity is afoot” (**Board Review 08**). A *Terry Stop*, or Level 3 encounter, requires an officer to have individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or misdemeanor. “[A] person has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable

person would have believed that he was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (**Board Review 09**).

NYPD Patrol Guide Procedure 216-09 governs procedure for addressing animal bites, which includes preparing an Aided Report and a Dangerous Animal/Bite Report (**Board Review 10**). This procedure does not reference any criminal liability for the animal’s owner, nor does it include steps for law enforcement action against the owner, such as issuing a summons or making an arrest. NYPD Patrol Guide Procedure 214-33 details the process for “properly investigating complaints involving dangerous animals/dogs requiring a police response” (**Board Review 11**). Like Patrol Guide Procedure 216-09, this protocol does not indicate any criminal liability for the dog’s owner based on the bite, outlining an arrest and desk appearance issuance procedure only for cases where the owner is suspected of animal cruelty.

NYPD Patrol Guide Procedure 212-90 states that officers should obtain the services of an interpreter or utilize the language skills of a bilingual officer when they encounter a limited English proficient (“LEP”) person and interpretation is necessary (**Board Review 12**). The procedure to provide interpretation/translation services for members of the public in the field should be complied with “[i]f doubt exists regarding whether a person requires language assistance services, or if the person requests an interpreter.” The procedure also enables officers to utilize bilingual members of the public to assist during “exigent circumstances” to provide “immediate services to LEP person(s)” or “during a non-emergency encounter, if the use of such an interpreter will expedite the delivery of police services without adversely impacting the quality of the services provided.” Officers must weigh four factors when considering using a bilingual member of the public: “The nature and importance of the police services being provided, [...]he apparent capacity of the interpreter, [...]he apparent impartiality of the interpreter, and [...]he sensitivity/confidentiality of the topic.”

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED] Body-worn camera footage plainly contradicts PO Cobic and PO Cosgrave’s shared testimony that § 87(2)(b) was free to leave.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Body-worn camera footage shows that § 87(2)(b) is able to understand and communicate with the officers to a certain extent, doing her best to answer the officers’ questions. However, it is clear that § 87(2)(b) English proficiency is limited – her sentences are fragmented, and she repeatedly struggles to find words. § 87(2)(g)

[REDACTED]
[REDACTED]

Allegation (G) Abuse of Authority: Police Officer Dennis Cobic took law enforcement action based upon actual or perceived national origin.

Allegation (H) Abuse of Authority: Police Officer Annie Cosgrave took law enforcement action based upon actual or perceived national origin.

A police officer's failure to obtain adequate language interpretation services for an LEP civilian with whom the officer is interacting in their law enforcement capacity and whom the officer knows has limited proficiency in English constitutes national origin discrimination under the law and therefore violates the NYPD's policy against bias-based policing.

Under NYPD Administrative Guide Procedure 304-17, NYPD officers' law enforcement actions "must be based on the standards required by . . . applicable laws." (**Board Review 13**). Administrative Guide § 304-17 explicitly provides that the NYPD "is committed to providing its programs and services without discrimination in accordance with Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin (*including language*)" (emphasis added). In turn, Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, prohibits government agencies that receive federal funding from discriminating on the basis of race, color, or national origin when providing services to the public (**Board Review 14**). *See also U.S. Dep't of Justice Implementing Regulations for Title VI*, 28 C.F.R. §§ 42.104(b)(1)(iv) and (b)(2) (**Board Review 15**).

The U.S. Department of Justice, which enforces compliance with Title VI and its regulations by state and local law enforcement agencies that receive federal funding (including the NYPD), has clarified in its *Guidance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* ("DOJ LEP Guidance") that Title VI and its implementing regulations require those law enforcement agencies to take "reasonable steps" to ensure that LEP persons have "meaningful access to" and can "effectively participate in or benefit from" the agencies' programs and activities, including street stops and field investigations, police responses to requests for assistance, and custodial interrogations, and that failure to take such reasonable steps during these kinds of police-civilian encounters violates Title VI's prohibition against national origin discrimination. *See DOJ LEP Guidance*, 67 FR 41455, 41457, 41459, Appendix A (June 18, 2002) (**Board Review 16**). In addition, federal courts have repeatedly held that law enforcement and other government officials' failure to provide language assistance to LEP persons constitutes national origin discrimination under Title VI. *See, e.g., U.S. v. Maricopa Cty.*, 915 F.Supp.2d, 1073, 1079-81 (D.Ariz. 2012) (**Board Review 17**); *Jones v. Gusman*, 296 F.R.D. 416, 454 (E.D. La. 2013) (**Board Review 18**); *New York v. Utica City School Dist.*, 177 F.Supp.3d 739, 752 (N.D.N.Y. 2016) (**Board Review 19**); *Methelus v. School Bd.*, 243 F.Supp.3d 1266, 1277-78 (M.D. Fla. 2017) (**Board Review 20**).

Another applicable law is the New York City Human Rights Law (NYCHRL), which prohibits an employee of a "provider of public accommodation" from "withhold[ing] from or deny[ing] to [a] person the full and equal enjoyment, on equal terms and conditions, of any of the . . . services" of that provider because of the person's actual or perceived national origin. *See* N.Y.C. Admin. Code § 8-107(4) (**Board Review 21**). As a provider of services to the public, the NYPD is a "provider of public accommodation" under the NYCHRL, *see* N.Y.C. Admin. Code § 8-102 (**Board Review 22**),

and police officers, as NYPD employees, are therefore subject to the NYCHRL's prohibition on national origin discrimination. In addition, the N.Y. State Appellate Division for the First Department has held that a New York City government agency's failure to provide adequate language interpretation services to LEP persons attempting to access the agency's services constitutes national origin discrimination under the NYCHRL. *See Boureima v. N.Y.C. Human Res. Admin.*, 128 A.D.3d 532 (1st Dep't 2015) (citing *Colwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1116-17 (9th Cir. 2009)) (**Board Review 23**).

§ 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Annie Cosgrave threatened to remove § 87(2)(b) to the hospital.

In her statement to the CCRB, PO Cosgrave testified that she asked § 87(2)(b) if she needed to go to the hospital (**Board Review 06 & 07**). PO Cosgrave believed that because § 87(2)(b) did not know her address or how long she had lived there, § 87(2)(b) was disoriented to the point of medical concern. PO Cosgrave described § 87(2)(b) demeanor as agitated, which also factored into PO Cosgrave's concern.

PO Cosgrave's representative asked PO Cosgrave if § 87(2)(b) age – specifically that § 87(2)(b) was “elderly” – was a contributing factor to PO Cosgrave's assessment. PO Cosgrave initially agreed with her representative that age was a factor, but later in the interview denied the same assertion.

PO Cosgrave could not articulate any specific standard for when officers are supposed to call EMS on a civilian.

PO Cobic's body-worn camera footage at 08:46 shows PO Cosgrave stating, “She's playing games” in reference to § 87(2)(b) inability to answer questions (**Board Review 03**). At 11:14, the same footage shows PO Cosgrave asking § 87(2)(b) if she needs a hospital. § 87(2)(b) says the officers are bothering her.

NYPD Patrol Guide Procedure 221-13 requires that a person cannot be determined to be an emotionally disturbed person and forcibly removed to the hospital unless they appear to be conducting themselves in a manner likely to cause injury to themselves or others (**Board Review 24**).

§ 87(2)(g)

First, § 87(2)(b) pointed to the building behind her multiple times when asked for her address, indicating she did know where she lived. Second, PO Cosgrave stated that § 87(2)(b) was “playing games,” indicating PO Cosgrave's belief that § 87(2)(b) was being intentionally evasive, not that she was disoriented. § 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Annie Cosgrave took law enforcement action based upon actual or perceived age.

Allegation (K) Abuse of Authority: Police Officer Dennis Cobic took law enforcement action based upon actual or perceived age.

In her statement to the CCRB, § 87(2)(b) testified that she did not believe the officers' treatment was standard procedure, and that her age – specifically that she is a “senior” – informed their actions (**Board Review 04**).

As noted above, PO Cosgrave's representative asked PO Cosgrave if § 87(2)(b) age – specifically that § 87(2)(b) was “elderly” – contributed to PO Cosgrave's concern for § 87(2)(b) medical wellbeing (**Board Review 06 & 07**). PO Cosgrave initially agreed with her representative that age was a factor, but later in the interview denied the same assertion.

NYPD Administrative Guide Section 304-17: Department Policy Prohibiting Racial Profiling and Bias-Based Policing (“AG 304-17”) and N.Y.C. Administrative Code § 14-151 prohibit NYPD MOS from engaging in bias-based policing, which is defined as “an act of a member of the [NYPD] that relies on creed, age, immigration or citizenship status, gender [including gender identity], sexual orientation, disability or housing status as the determinative factor in initiating law enforcement action against the individual, rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity.” (**Board Review 13 & 25**). “The determinative factor” is “the one factor that tended to settle the [officer]'s decision” to take law enforcement action. *See Patrolmen's Benevolent Ass'n v. City of N.Y.*, 142 A.D.3d 53, 65 (1st Dep't 2016) (**Board Review 26**). While the “determinative factor” does not have to be the “sole factor” in the officer's decision, *see PBA v. City of N.Y.*, 142 A.D.3d at 63, it must be a “but-for cause” of the officer's decision—that is, the officer would not have taken the specific law enforcement action if not for the civilian's protected identity trait (e.g., gender, age, religion, sexual orientation, etc.). *See Gannon v. UPS*, 529 Fed.Appx. 102, 105 (2d Cir. 2013) (**Board Review 27**); *Ioele v. Alden Press, Inc.*, 145 A.D.2d 29, 34 (1st Dep't 1989) (**Board Review 28**); *Cannon v. N.Y.C. Police Dep't*, 2016 Slip.Op. 30657, *5 (N.Y. Co. Sup. Ct. April 13, 2016) (**Board Review 29**); *Bostock v. Clayton Cty.*, 140 S.Ct. 1731, 1739 (2020) (**Board Review 30**); *Kwan v. Andalex Group, LLC*, 737 F.3d 834, 846 (2d Cir. 2015) (**Board Review 31**).

A finding that a civilian's protected identity trait was the “determinative factor” in an officer's decision to take law enforcement action can be based on direct or circumstantial evidence. *Gatling v. West*, 850 Fed.App'x. 91, 97 (2d Cir. 2021) (**Board Review 32**); *Millan-Hernandez v. Barr*, 965 F.3d 140, 148 (2d Cir. 2020) (**Board Review 33**); *Bennett v. Health Mgmt. Sys., Inc.*, 92 A.D.3d 29, 40-41 (1st Dep't 2011) (**Board Review 34**). Direct evidence includes evidence that “a decision relies expressly on [the civilian's] protected characteristic,” as well as conduct or statements “directly reflecting [the officer's] discriminatory attitude” toward members of the civilian's demographic group. *See Young v. UPS*, 575 U.S. 206, 213 (2015) (**Board Review 35**); *Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 913 (2d Cir. 1997)) (**Board Review 36**).

Because discriminatory motive “is rarely susceptible to direct proof,” it can be and often is established through circumstantial evidence. *Millan-Hernandez v. Barr*, 965 F.3d 140, 148 (2d Cir. 2020) (**Board Review 31**); *Bennett v. Health Mgmt Sys., Inc.*, 92 A.D.3d 29, 40-41 (1st Dep't 2011)

(Board Review 34). Rarely is one piece of circumstantial evidence sufficient on its own to establish an officer's discriminatory motive; instead, the factfinder must consider the "totality of the relevant facts." *Washington v. Davis*, 426 U.S. 229, 242 (1976) **(Board Review 37)**; *Leblanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995) **(Board Review 38)**. Examples of circumstantial evidence to consider include, but are not limited to:

- (i) the sequence of events leading up to the law enforcement activities at issue;
- (ii) the officers' departure from their own and/or their fellow officers' customary practices during the incident in question;
- (iii) the officers' violation of law and/or department policies and procedures during the incident in question;
- (iv) the falsity of the officers' non-discriminatory explanations for their actions;
- (v) data showing a pattern of disparities in the officers' enforcement activity over time; and
- (vi) officer history of prior biased acts or similar misconduct committed against persons from the complainant/victim's group.

In addition, to establish that the civilian's protected identity trait was the determinative factor in the officer's decision to take law enforcement action, the preponderance of the circumstantial evidence must show that both (i) the officer's decision was motivated by the civilian's protected identity trait, AND (ii) the officer's stated non-discriminatory reasons for their actions were false or pretextual (i.e., the officer would not have taken the law enforcement action based on those non-discriminatory reasons alone). *St. Mary's Honor Ctr v. Hicks*, 509 U.S. 502, 515 (1993) **(Board Review 39)**; *Naumovski v. Norris*, 934 F.3d 200, 217 (2d Cir. 2019) **(Board Review 40)**; *Grella v. St. Francis Hosp.*, 149 A.D.3d 1046, 1047 (2d Dep't 2017) **(Board Review 41)**; *Bennett*, 92 A.D.2d at 36 **(Board Review 34)**.

As to the sequence of events, § 87(2)(b) was pointed out to the officers by a third party – the 911 caller – not independently approached by the officers. § 87(2)(g) the stop of § 87(2)(b) was motivated by the 911 caller's specific allegation and request for assistance. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g) PO Cobic and PO Cosgrave § 87(2)(g)
§ 87(2)(g) their conversation with the 911 caller explaining they could not force § 87(2)(b) to provide her information. Nevertheless, PO Cobic and PO Cosgrave did not allow § 87(2)(b) to refuse their questions or freely leave.

PO Cobic and PO Cosgrave did not have any stop reports for self-initiated stops in the prior year to this incident. Due to this lack of data, no data analysis was possible to further inform a disposition on the merits for Allegations J-K.

The NYPD noted that searches for both PO Cobic and PO Cosgrave yielded no adverse credibility findings, IAB / Profiling allegations, EEO allegations, or lawsuits **(Board Review 42, 43, & 44)**. Neither officers' CPI contained any information about relevant complaints **(Board Review 42)**. Available employment histories and evaluations did not contain any information about relevant complaints or professional deficiencies **(Board Review 42, 45, & 46)**.

Neither PO Cobic nor PO Cosgrave made any statements about § 87(2)(b) age during the incident. Likewise, PO Cobic's testimony to the CCRB did not give any indication that § 87(2)(b)

§ 87(2)(b) age informed his law enforcement actions. Though PO Cosgrave equivocated on whether age was a factor in her assessment of § 87(2)(b) potential need for medical attention, her testimony and the body-worn camera footage show that § 87(2)(b) difficulty communicating due to a language barrier § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Dennis Cobic improperly used his body-worn camera.

In her statement to the CCRB, § 87(2)(b) testified that she heard the interaction between her mother, dog, and the officers from her apartment, prompting her to come downstairs and intervene (**Board Review 47**). During her interaction with the officers, § 87(2)(b) observed that PO Cobic's body-worn camera did not have a red light while PO Cosgrave's body-worn camera did have a red light, leading § 87(2)(b) to believe PO Cobic's body-worn camera was not activated.

Patrol Guide Procedure 212-123 requires officers to "record continuously, until investigative, enforcement, or other police action is concluded" (**Board Review 48**). "Police action" is defined as "Any police service, as well as, law enforcement or investigative activity conducted in furtherance of official duties. Police action includes responding to calls for service, addressing quality of life conditions, handling pick-up assignments and any self-initiated investigative or enforcement actions such as witness canvasses, vehicle stops and Investigative Encounters."

PO Cobic's body-worn camera recording was obtained by this investigation and captures the full extent of interaction described by both § 87(2)(b) and § 87(2)(b) confirming that his body-worn camera was activated § 87(2)(g)

§ 87(2)(g)

Allegation (M) Abuse of Authority: Police Officer Annie Cosgrave failed to provide § 87(2)(b) with a business card.

Allegation (N) Abuse of Authority: Police Officer Dennis Cobic failed to provide § 87(2)(b) with a business card.

Allegation (O) Abuse of Authority: Police Officer Annie Cosgrave failed to provide § 87(2)(b) with a business card.

Allegation (P) Abuse of Authority: Police Officer Dennis Cobic failed to provide § 87(2)(b) with a business card.

In her statement to the CCRB, § 87(2)(b) testified that neither PO Cobic nor PO Cosgrave offered or provided her with their name, badge number, or business card (**Board Review 49**). § 87(2)(b) similarly testified that she did not receive a business card from either officer.

In his statement to the CCRB, PO Cobic testified that neither § 87(2)(b) nor § 87(2)(b) requested his business card, and PO Cobic did not provide one (**Board Review 05**).

In her statement to the CCRB, PO Cosgrave testified that neither § 87(2)(b) nor § 87(2)(b) requested her business card, and PO Cosgrave did not provide one (**Board Review 06 & 07**).

Body-worn camera footage confirms that neither § 87(2)(b) nor § 87(2)(b) requested business cards (**Board Review 03**). The footage further shows that neither PO Cosgrave nor PO Cobic offered or provided business cards to either § 87(2)(b) or § 87(2)(b).

NYPD Administrative Guide Procedure 304-11 (Board Review 49) and N.Y.C. Administrative Code § 14-174 (Board Review 50) state that officers are required to offer a business card at the conclusion of a law enforcement activity except in cases resulting in a summons or arrest.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

This is the first CCRB complaint to which either § 87(2)(b) or § 87(2)(b) has been a party.

PO Cobic has been a member-of-service for three years and this is the first CCRB complaint to which he has been a subject.

PO Cosgrave has been a member-of-service for two years and this is the first CCRB complaint to which she has been a subject.

Mediation, Civil, and Criminal Histories

This complaint was not suitable for mediation.

As of March 12, 2024, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**Board Review 51**).

§ 87(2)(b) § 86(1)(3)&(4) § 87(2)(c)

Squad No.: Bias Squad 2

Investigator:	<u>/s/ Hannah Deegan</u> Signature	<u>Inv. Atty. Hannah Deegan</u> Print Title & Name	<u>5/16/2024</u> Date
Squad Leader:	<u>Tessa Yesselman</u> Signature	<u>IM Tessa Yesselman</u> Print Title & Name RPBP Dep. Dir.	<u>5/23/2024</u> Date
Reviewer:	<u>Bianca Victoria Scott</u> Signature	<u>Bianca Victoria Scott, Esq.</u> Print Title & Name	<u>7/30/2024</u> Date